(16,604.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 391.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES PAUL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 27, 1897.

1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Arkansas, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the November term, 1896, thereof, between St. Louis, Iron Mountain & Southern Railway Company, pl't'f in error, and Charles Paul, defendant in error, wherein was drawn in question the validity of a statute of said State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such statute, a manifest error hath happened, to the great damage of the said St. Louis, Iron Mountain & Southern Railway Company, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, D. C., and filed in the office of the clerk of the United States Supreme Court, before the second Monday of October, 1897, to the end that, the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22 day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

Issued in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the 121st.

{ The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A. }

RALPH L. GOODRICH,
Clerk U. S. Circuit Court, East. Dist. Ark., West. Div.

[Endorsed:] Filed May 22d, 1897. P. D. English, clerk supreme court of Arkansas.

2 Allowed by—

HENRY G. BUNN,
Chief Justice of the Supreme Court of Arkansas.

STATE OF ARKANSAS:

In the Supreme Court.

I, P. D. English, clerk of the supreme court of the State of Arkansas, hereby certify that in obedience to the mandate of the within writ of error a duly certified transcript, under the said seal of said court, of the record and proceedings in the cause therein stated, with all things concerning the same, is hereto attached.

In testimony whereof I hereto set my hand as clerk of said supreme court and affix the seal of said court, at my office, in the city of Little Rock, this 22d day of May, A. D. 1897.

[Seal of the Supreme Court of Arkansas.]

P. D. ENGLISH,
Clerk Supreme Court of Arkansas.

Service accepted this 22nd day of May, 1897.

CHARLES PAUL,
Def't in Error,
By J. A. WATKINS &
D. M. CLOUD,
Att'ys of Record.

3 *Citation.*

The United States of America to Charles Paul, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, wherein The St. Louis, Iron Mountain & Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. G. Bunn, chief justice of the supreme court of Arkansas, this 22 day of May, A. D. 1897.

HENRY G. BUNN,
Chief Justice of the Supreme Court of Arkansas.

Service of the within citation acknowledged this 22 day of May, 1897, at Little Rock, Arkansas.

CHARLES PAUL,
Def't in Error,
By J. A. WATKINS &
D. M. CLOUD,
Attorneys for Charles Paul, Defendant in Error.

Filed May 22d, 1897.

P. D. ENGLISH, *Clerk.*

4 No. 2921. St. L., I. M. & S. R'y Co. *vs.* Chas. Paul. Substituted record. Filed by order of court Feb'y 17th, 1896. W. P. Campbell, clerk, by P. D. English, D. C.

5 In Justice Court of G. R. Hunnicutt, in Saline Township, in Saline County, Arkansas.

CHARLES PAUL, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } Complaint at Law.

The plaintiff states that the defendant, The St. Louis, Iron Mountain and Southern Railway Co., is a regularly organized corporation under the laws of the State of Arkansas and own- and operate- a railroad from Moark, Arkansas, to Texarkana, Arkansas. The plaintiff states further that on the 28th day of March, 1894, he hired to defendant company as a laborer; that he contracted to work for the defendant at the price of $1.25 per day, and that he performed 30½ days' labor, and on the 4th day of May, 1894, the defendant discharged plaintiff, and at said time defendant owed plaintiff the sum of $21.80 after deducting board and hospital fees; defendant failed to pay plaintiff said sum on said day and has refused to pay the same until this time; that there has been 39 working days' service — he was discharged; that by law he is entitled to the sum of one & $\frac{25}{100}$ dollars per day as a penalty for said failure to pay on said day of discharge. Whereupon he prays judgment for said sum of $21.80 and the further sum of one & $\frac{25}{100}$ — per day until paid and for costs.

D. M. CLOUD,
Att'y for Pl'ff.

I, Charles Paul, do solemnly swear that I am the plaintiff in this action, and that the matters and facts set forth herein are true.

CHARLES PAUL.

6 Subscribed and sworn to before me this June 18, 1894.
G. R. HUNNICUTT, *J. P.*

Summons issued June 18, 1894.
Returned and filed June 29, 1894.

Saline Circuit Court.

CHAS. PAUL, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } Demurrer.

Comes the defendant and demurs to so much of plaintiff's complaint herein as seeks to recover a penalty for failure to pay wages claimed by plaintiff at the time of his discharge, on the following grounds, to wit:

That the act of the General Assembly of the State of Arkansas entitled "An act to provide for the protection of servants and employees of railroads," approved March 25th, 1889, Acts of 1889, page 76, on which the penalty is sought to be collected, is unconstitutional and void, in this:

1st. That it is violative of article 5 of the amendments to the Constitution of the United States.

2nd. That it is violative of article 14 of the amendments to said Constitution.

3rd. That it is violative of sections 2, 3, 7, 8, 13, 18, 21, and 22 of article 2 of the constitution of the State of Arkansas.

4th. That it is special and class legislation and therein violative of both the Constitution of the United States and the *Constitution of the United States and* constitution of the State of Arkansas.

J. E. WILLIAMS,
DODGE & JOHNSON,
Attorneys for Defendant.

7 Saline Circuit Court.

CHARLES PAUL, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } Answer.

I.

Comes the defendant and for answer to plaintiff's complaint herein admits that it is indebted to plaintiff in the sum of $22.50 and interest thereon from the date of the discharge of said plaintiff, and no more, and now offers to confess judgment to said plaintiff for said amount in court.

II.

And defendant, answering so much of said complaint as seeks to recover a penalty for failure to pay the amount of wages due said plaintiff at the date of his discharge, says that the said plaintiff specially directed that his time-check should be sent to the agent at Benton for payment, which was accordingly done, and that the said plaintiff remained out of reach of the defendant herein, off at work on the interior of the Lott road, and that he has not given the defendant an opportunity to pay him his said wages until the day prior to the bringing of this suit, and then the said defendant did not refuse to pay him his said wages then due him, but merely required identification that he was the party named and to whom this defendant was indebted; that the same was a reasonable requirement and became necessary by reason of the plaintiff's having directed that the money should be sent to a station agent on a part of defendant's line different and not to the point where the said plaintiff had been at work, and where the defendant had no other means of knowing the party to be one of its employés.

8 III.

And, further answering, this defendant says that plaintiff is not entitled to recover as a penalty any amount above the wages actually due him at the time of his discharge, with interest thereon, for the reason, and defendant so alleges, that the act of the General Assembly of the State of Arkansas entitled "An act to provide for the protection of servants and employees of railroads," approved March 25, 1889 (Acts of 1889, p. 76), under which the penalty is claimed, is unconstitutional and void and of no effect, in this:

First. That it is violative of article 5 of the amendments to the Constitution of the United States.

Second. That it is violative of article 14 of the amendments to said Constitution.

Third. That it is violative of sections 2, 3, 7, 8, 13, 18, 21, and 22 of article 2 of the constitution of the State of Arkansas.

Fourth. That it is special and class legislation, and therefore in violation of both the Constitution of the United States and the State of Arkansas.

Wherefore defendant prays to be permitted to confess judgment for the amount it actually owes plaintiff, and to go hence with its costs.

J. E. WILLIAMS &
DODGE & JOHNSON,
Attorneys for Defendant.

9 In the Saline Circuit Court, August Term, 1894.

CHARLES PAUL
vs.
ST. L., I. M. & S. R'Y CO.

Comes the plaintiff and demurs to the 3rd paragraph of defendant's answer, because he says that the matters and facts stated there- do*es* not constitute any defense to the plaintiff's cause of action.

D. M. CLOUD,
Att'y for Plaintiff.

10 STATE OF ARKANSAS }
County of Saline. }

MONDAY, *August 27th*, 1894.

At a circuit court begun and held at the court-house, in the town of Benton, county of Saline and State of Arkansas, on Monday, August 27th, 1894, the same being the 4th Monday in said month and the time and place appointed by law for holding a term of said court—present and presiding, the Hon. A. M. Duffie, judge of the 7th judicial circuit of Arkansas, before whom the following proceedings were had, to wit:

Ordered that court be proclaimed open pursuant to adjournment, which was accordingly done by the sheriff of Saline county.

Friday, August 31st, 1894, an adjourned day of said term of said court.

CHARLES PAUL
vs.
ST. L., I. M. & S. R'Y CO. } 539.

On this day comes the plaintiff, by his attorney, D. M. Cloud, Esqr.; comes also the defendant, by its attorney-, Dodge and Johnson and J. E. Williams, Esqrs., and files its demurrer to plaintiff's complaint herein.

Saturday, September 8th, 1894, an adjourned day of said term of said court.

CHARLES PAUL
vs.
THE ST. L., I. M. & S. R'Y COMPANY. } 539.

11 On this day comes the plaintiff in person and by his attorney, D. M. Cloud, Esqr.; comes also the defendant, The St. Louis, Iron Mountain and Southern Railway Company, by its attorneys, Dodge and Johnson, Esqrs., and the demurrer heretofore filed herein is argued by counsel and is submitted to the court, and is by the court overruled; to which ruling of the court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

Same day.

CHARLES PAUL
v.
THE ST. L., I. M. & S. R'Y COMPANY. } 539.

On this day comes the parties to this suit, by their respective attorneys, and defendant files its answer to complaint of plaintiff herein.

Same day.

CHARLES PAUL
v.
THE ST. L., I. M. & S. R'Y COMPANY. } 539.

On this day comes the parties to this suit and by their respective attorneys, and the plaintiff files his demurrer to the 3rd paragraph of defendant's answer herein. Said demurrer was submitted to the court and by the court sustained.

It is therefore considered and ordered by the court that said demurrer, as to the 3rd paragraph of defendant's answer, be, and the same is hereby, sustained; to which ruling the defendant at the time excepted.

Saturday, September 8th, 1894, an adjourned day of said term of said court.

12 CHARLES PAUL
v.
THE SAINT LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY. } 539.

On this day, this cause coming on for trial and both parties announcing themselves ready, by agreement of the parties a jury trial is waived, and the same is heard by the court, sitting as a jury; and after hearing the evidence, the cause having been submitted, the court doth find that the plaintiff is entitled to recover from the defendant the sum of $21.80, his debt, and the further sum of $48.75 as a penalty for failure to pay him at the time of his discharge, being at the rate of $1.25 per day from the date of his discharge until the 18th day of June, the date of the commencement of this suit.

It is therefore considered, ordered, and adjudged that the plaintiff, Charles Paul, do have and recover of and from the defendant, The St. Louis, Iron Mountain and Southern Railway Company, the sum of $70.55 and all his costs in this suit expended, for which execution may issue. On this comes the defendant and prays an appeal to the supreme court of the State of Arkansas, which is granted.

13 *Bill of Costs.*

CHARLES PAUL
v.
ST. L., I. M. & S. R'Y CO. } 539.

To W. H. Evans, clerk	$2 50
" G. R. Hunnicutt, J. P.	4 05
" J. R. McAdoo, const.	1 20
Total	$7 75

Clerk's Certificate.

STATE OF ARKANSAS, }
County of Saline. }

I, W. H. Evans, clerk of the circuit court within and for the county aforesaid, do hereby certify that the within and foregoing is a true and complete copy of the "complaint, demurrer to the complaint," answer, demurrer to the answer, order overruling demurrer to complaint, order sustaining 3rd paragraph to defendant's answer, and judgment in case — Charles Paul *vs.* St Louis, Iron Mountain and Southern Railway Company, tried in the Saline circuit court on appeal from J. P. court, as the same appears of record and on file in my office.

Witness my hand and official seal on this the 17th day of January, 1896.

[SEAL.] W. H. EVANS, *Clerk.*

14 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held on the 27th day, being the fourth Monday, of November, A. D. 1895, at the court-house, in the city of Little Rock, the following proceedings were had, to wit, on the 13th day of January, 1896, a day of said term:

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Appellant, *vs.* CHARLES PAUL, Appellee.	2921. Appeal from Saline Circuit Court.

Comes the appellant, by attorneys, and suggests to the court that the record in this cause has been lost or mislaid and ask leave to file a substituted transcript within thirty days, which is by the court granted.

And on February 17th, 1896, the following proceedings were had:

KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, Appellant, *vs.* JOHN BOLAND, Appellee.	Cross-appeal from Craighead Circuit Court.

and

KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, Appellant, *vs.* FRITZ WIDDICK, Appellee.	Cross-appeals from Craighead Circuit Court.

Come the appellants in these causes and, on motion and for good cause shown, these causes are passed and set to be called for submission on June 1st with Nos. 2921 and 3123.

15 And on the 30th day of November, 1896, the following proceedings were had, to wit:

SAINT LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Appellant, *vs.* CHARLES PAUL, Appellee.	Appeal from Saline Circuit Court.

and

KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, Appellants, *vs.* JOHN BOLAND, Appellee.	Cross-appeal from Craighead Circuit Court.

and

KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, Appellant, *vs.* FRITZ WIDDICK, Appellee.	Cross-appeal from Craighead Circuit Court.

Come the parties, by attorneys, and these causes are submitted upon the briefs filed with No. 3123 and by the court taken under advisement.

And on the 1st day of May, 1897, the following proceedings were had:

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Appellant, *vs.* CHARLES PAUL, Appellee.	Appeal from Saline Circuit Court.

This cause came on to be heard upon the transcript of the record of the circuit court of Saline county and was argued by counsel; on consideration whereof it is the opinion of the court that there
16 is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further considered that said appellee recover of said appellant all his costs in this court in this cause expended, and have execution thereof.

17 In the Supreme Court of Arkansas, May 1st, 1897.

No. 87.

ST. L., I. M. & S. R'Y Co.
vs.
PAUL.

K. C., F. S. & M. R'Y Co.
vs.
BOLAND.

K. C., F. S. & M. R'Y Co.
vs.
WHIDDICK.

Opinion.

BATTLE, *J.:*

The appellees, Charles Paul, John Boland, and Fritz Whiddick, were day laborers in the employment respectively of the appellants, The St. Louis, Iron Mountain and Southern Railway Company and The Kansas City, Fort Scott and Memphis Railroad Company, one earning one dollar and twenty-five cents a day and each of the other two, one dollar and thirty-five cents. Their employers discharged them without paying the wages they had respectively earned, and each brought a suit against his debtor for the amount due him and the damages allowed by the act of the General Assembly of the State of Arkansas entitled "An act to provide for the protection of servants and employés of railroads," approved March 25th, 1889. The defendants did not deny that the wages claimed were due them, but resisted the recovery of the damages on the ground that the act under which they were claimed was in violation of the fourteenth amendment of the Constitution of the United States and of the constitution of the State of Arkansas.

The first section of the act in question, to the extent it was sustained in Leep *v.* Railway Company, 58 Ark., 407, is as follows:

"Whenever any corporation, engaged in the business of operating or constructing any railroad or railroad bridge, shall discharge with or without cause, or refuse to further employ, any servant or employee thereof, the unpaid wages of each servant or employee
18 then earned at the contract rate, without abatement or deduction shall be and become due and payable, on the day of such discharge or refusal to longer employ, and if the same be not paid on such day, then, as a penalty for such non-payment, the wages of such servant or employee shall continue at the same rate until paid: Provided, such wages shall not continue more than sixty days, unless an action therefor shall be commenced within that time."

In sustaining it the court held that the words "without abatement or deduction," as used in the act, means "that the unpaid wages earned at the contract rate at the time of the discharge shall

be paid without discount on account of the payment thereof before they were payable according to the terms of the contract of employment."

The railroad companies contend that they are persons within the meaning of that word as used in the fourteenth amendment of the Constitution of the United States, and that the act in question, as sustained and construed in Leep *v.* Railway Company, *supra*, is in violation of the amendment, in this: It denies to them the "equal protection of the law." "If it be conceded that they are persons, as contended, it would not follow that they are entitled to all the rights of natural persons. They possess only those rights, powers, or properties which the charters of their creation confer upon them, either expressly or as incidental to their existence. The same is true of all other corporations. All of them are creatures of the legislature. In their creation the legislature could and did divide them into classes and give to each class such rights, capacities, and powers as it saw fit. Neither has the right to complain of a discrimination in favor of one against the other, or that all or any of the rights of natural persons have not been given to it."

The powers conferred upon them by their charters may be modified or diminished by amendment or extinguished by the
19 repeal of the charters. The constitution of this State ordains: "The General Assembly shall have the power to alter, revoke or amend any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators." The railroad companies in this case do not deny, but tacitly concede, that their charters are subject to alteration under this provision of the constitution. The question is, Did the legislature have the power to do so in the manner and to the extent it undertook by the act in question?

In commenting upon such a power to amend, which was reserved by the State of California, Mr. Justice Field, in delivering the opinion of the court in the Railroad Tax cases, 13 Fed. Rep., 754, said: "It (State) may confer by its general laws upon corporations certain capacities of doing business and of having perpetual succession in their members. It may make its grant in these respects revocable at pleasure. It may make the grant subject to modifications and impose conditions upon its use and reserve the right to change these at will; but, whatever property the corporations acquire in the exercise of the capacities conferred, they hold under the same guaranties which protect the property of individuals from spoliation. It cannot be taken for public use without due process of law, nor can it be subjected to burdens different from those laid upon the property of individuals under like circumstances. The State grants to railroad corporations formed under its laws a franchise and over it retains control and may withdraw or modify it. By the reservation clause it retains power only over that which it grants. It does not grant the rails on the road; it does not grant the cars on the track, nor the engines which moves them, and over

them it can exercise no power except such as may be exer-
20 cise- with reference to all property used by carriers for the public. The reservation of power over the franchise—that is, over that which is granted—makes its grant a conditional or revocable contract, whose obligation is not impaired by its revocation or change."

"In the Sinking Fund cases, 99 U. S., 700, 'the question was whether Congress had the constitutional power to enact a law compelling the Union Pacific and Central Pacific Railroad Companies to set aside a portion of their current earnings as a sinking fund for the purpose of meeting a very large indebtedness secured by mortgage upon the roads and payable at a future day.' The majority of the court held that the legislation was valid as an exercise of the general legislative powers of the Government, and also because the right to alter or amend the charters of the companies had been expressly reserved to Congress." In commenting on the reserved power to amend or repeal the charters of corporations in that case Chief Justice Waite, in delivering the opinion of the court, said: "All agree that it cannot be used to take away property already acquired under the operations of the charter or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made; but, as was said by this court, through Mr. Justice Clifford, in Miller *v.* The State (15 Wall., 498), 'it may safely be affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs, so as to protect the rights of stockholders and of creditors and for the proper disposition of its assets;' and, again, in Holyoke Company *v.* Lyman (*id.*, 519), 'to protect the rights of the public and of the corporators or to promote the due administration of the affairs of the corporation.' Mr. Justice Field, also speaking for the court, was even more explicit when, in Tomlinson *v.* Jessup (*id.*, 459), he said: 'The
21 reservation affects the entire relation between the State and the corporation and places under legislative control all rights, privileges, and immunities derived by its charter directly from the State;' and, again, as late as Railroad Company *v.* Maine (96 U. S., 510), 'by the reservation * * * the State retained the power to alter it (the charter) in all particulars constituting the grant to the new company formed under it of corporate rights, privileges, and immunities.' Mr. Justice Swayne, in Shields *v.* Ohio (95 U. S., 324), says, by way of limitation, 'the alterations must be reasonable; they must be in good faith and be consistent with the object and scope of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration.' The rules as here laid down are fully sustained by authority. * * * Giving full effect to the principles which have thus been authoritatively stated, we think it safe to say that whatever rules Congress might have prescribed in the original charter for the government of the corporation in the administration of its affairs it retained the power to establish by amendment. In so doing it cannot undo what has already been done, and it can-

not unmake contracts that have already been made; but it may provide for what shall be done in the future, and may direct what preparation shall be made for the due performance of contracts already entered into. It might originally have prohibited the borrowing of money on mortgage or it might have said that no bonded debt should be created without ample provision by sinking fund to meet it at maturity. Not having done so at first, it cannot now by direct legislation vacate mortgages already made under the powers originally granted nor release debts already contracted. A prohibition now against contracting debts will not avoid debts already contracted."

The act of March 25th, 1889, does not interfere with the disposition or control of the property of railroad companies, with their vested rights, or with contracts already made. All it re-
22 quires them to do is to pay the wages earned by their servants or employees, under contracts entered into after its enactment, at the time they discharge them or refuse to give them further employment. The effect of this requirement is to make the wages payable at the time of the discharge or refusal to employ, and to limit the right to contract. But this right was derived from the laws under which the railroad companies were organized, and, according to the cases cited, was subject to be limited, regulated, and controlled by the General Assembly, under the constitution of this State, whenever, in its opinion, it may be beneficial to the public, in such manner as may be just to the corporators. Consequently no right of the railroad companies was violated by the act in limiting the right to contract. Leep *v.* Railroad Company, 58 Ark., 407.

In the Sinking Fund cases the act of Congress required the railroad companies to provide for the payment of certain debts by a sinking fund before their maturity—virtually to pay debts before they were due. The act of March 25th requires the wages of the laborer to be paid when he leaves the employment of the company. One applies to past and the other to future transactions; one to secured debts, the other to the wages of the laborer. The object of each is the enforcement of a duty—the payment of debts. If the former act is constitutional, how can the latter be unconstitutional?

But an act of the legislature is not necessarily unconstitutional in the absence of a reservation of the power to alter or revoke charters, and does not deny the equal protection of the law because it imposes certain duties and liabilities upon only one class of corporations and upon no others. In Missouri Pacific Railway Company *v.* Mackey, 127 U. S., 205, a statute of Kansas provided that "every railroad company organized or doing business in 'that' State shall be liable for all damages done to any employee of such
23 company in consequence of any negligence of its agents, or by any mismanagement of its engineers or other employees, to any person sustaining such damage." Mr. Justice Field, in delivering the opinion of the court, said: "Such legislation does not infringe upon the clause of the fourteenth amendment requiring equal protection of the laws because it is special in its character. If

in conflict at all with that clause it must be on other grounds; and when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws if all persons brought under its influence are treated alike under the same conditions. A law giving to mechanics a lien on buildings constructed or repaired by them for the amount of their work and a law requiring railroad corporations to erect and maintain fences along their roads, separating them from lands of adjoining proprietors, so as to keep cattle off their tracks, are instances of this kind. Such legislation is not obnoxious to the last clause of the fourteenth amendment if all persons subject to it are treated alike under similar circumstances and conditions in respect to both of the privileges conferred and the liabilities imposed. It is conceded that corporations are persons within the meaning of the amendment. * * * But the hazardous character of the business of operating a railway would seem to call for special legislation with respect to railroad corporations having for its object the protection of their employees as well as the safety of the public. The business of other corporations is not subject to similar dangers to their employees, and no objections therefore can be made to the legislation on the ground of its making an unjust discrimination. It meets a particular necessity, and all railroad corporations are without distinction made subject to the same liabilities. As said by the court below, it is simply a
24 question of legislative discretion whether the same liabilities shall be applied to carriers by canal and stage coaches and to persons and corporations using steam in manufactories."

In the case last cited the protection of the employés of railroad companies, as in this case, was the object of the act in question. The act in that case, as in this, applies to only one class of corporations and to no others; but the act of March 25th is not dependent on the same power to legislate. The constitution of this State, as before stated, expressly provides that the General Assembly shall have the power to alter, revoke, or annul any charter of incorporation now existing and revocable at the adopton of the constitution or any that may thereafter be created whenever, in their opinion, it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the corporators. In Leep *v.* Railway Company, 58 Ark., 407, we held that the legislature had the power to pass the act of March 25th by virtue of this provision of the constitution. In justifying it, however, we based it, as in the case cited, upon the peculiar character of the business of railroads and the particular benefits to be derived therefrom by the public. We said: "Whenever the charters of railroad companies became obstacles in the way of the legislature so regulating their roads as to make them subserve the public interest to the fullest extent practicable, their charters are in that respect injurious to the citizens of the State, and can be amended as to defects in such manner as will be just to the corporators, for they are organized for a public purpose, and their roads are declared by the constitution to be public highways and they are made common

carriers. They are clothed with a public trust, and in many respects are expressly subjected by the constitution to the control of the legislature. There is no enterprise in which the
25 public is so largely interested as it is in the successful and efficient operation of railroads. With the trust with which they are clothed is imposed the duty to serve the public as common carriers in the most efficient manner practicable. For this reason the legislature may impose on them such duties as may be reasonably calculated to secure such results. Being created by statute, the legislature may so change them by amendment as to make them subserve the purpose for which they were created. If the legislature, in its wisdom, seeing that their employees are and will be persons dependent on their labor for a livelihood, and unable to work on a credit, should find that better servants and service could be secured by the prompt payment of their wages on the termination of their employment, and that the purpose of their creation would thereby be more nearly accomplished, it might require them to pay for the labor of their employees when the same is fully performed, at the end of their employment," and might require them to do so for the purpose of preventing that discontent produced by the non-payment of wages upon discharge which may lead to "strikes" and consequent injury to the interest of the public.

Another evidence of the validity of the act in question may be adduced: The legislature has the power to limit the right of railroad companies to contract by fixing the maximum of charges for the transportation of persons and property over their roads for the protection of passengers and shippers. When the rates of charges allowed are sufficient to yield a reasonable profit, the statute by which they are fixed is within the limits of the power; so in this case the act in question is an exercise of and is within the limits of the same power. It does not seriously impair the right of corporations to contract, but leaves them to contract with their em-
26 ployees on profitable terms, and in view of the public interest thereby subserved is just to the corporators. Leep *v.* Railway Company, 58 Ark., 407.

The validity of the act of March 25th is assailed upon the ground that the exemplary damages allowed for the non-payment of wages are excessive and unreasonable. The same complaint was made of a statute of Iowa, which is as follows: "Any corporation operating a railway that fails to fence the same against live stock running at large at all points where such right to fence exists shall be liable to the owner of any such stock injured or killed by reason of the want of such fence for the value of the property or damage caused unless the same was occasioned by the wilful act of the owner or his agent. * * * And if such corporation neglects to pay the value of or damage done to such stock within thirty days after notice in writing, accompanied by an affidavit of such injury or destruction, has been served on any officer, station or ticket agent employed in the management of the business of the corporation in the county where the injury complained of was committed, such owner shall be entitled to recover double the value of the stock killed or damage

caused thereto." The penalty in that act is imposed on account of the non-payment of damages within the thirty days. The validity of the statute was contested in Minneapolis Railway Co. *v.* Beckwith, 129 U. S., 26. Mr. Justice Field, speaking for the court, said: "As it is the duty of the railway company to keep its track free from animals, its neglect to do so by adopting the most reasonable means for that purpose, the fencing of its roadway, as indicated by the statute of Iowa, justly subjects it, as already stated, to punitive damages where injuries are committed by reason of such neglect. The imposition of punitive or exemplary damages in such cases cannot be opposed as in conflict with the prohibition against the
27 deprivation of property without due process of law. It is only one mode of imposing a penalty for the violation of duty, and its propriety and legality have been recognized, as stated in Day *v.* Woodworths, 13 How., 363, 371, by repeated judicial decisions for more than a century. Its authorization by the law in question to the extent of doubling the value of the property destroyed or of the damage caused upon refusal of the railway company, for thirty days after notice of the injury committed, to pay the actual value of the property or actual damage cannot therefore be justly assailed as infringing upon the fourteenth amendment of the Constitution of the United States."

So in the act of March 25th it is made the duty of railroad corporations to pay the wages of an employee at the end of his employment. To enforce the performance of this duty exemplary or punitive damages are imposed upon them for the failure to do so—that is, the liability to pay the wages at the contract rate until the wages earned on the day of the discharge or refusal to longer employ are paid. They are not necessarily more unreasonable, then, or as much so, as those allowed by the Iowa statute. The railroad company can stop them by the payment or tender of payment of the amount due the employee for wages actually earned. No other amount need be tendered for that purpose; but if it does not adopt this course the damages will not accrue for more than sixty days, "unless an action therefor shall be commenced within that time." The bringing of the action calls its attention to the demands of the employee and continues the wages (damages) beyond the sixty days, unless the company pays or offers to pay the wages earned at an earlier day. If it then fails to pay, the continuance of the penalty is due to its own fault; but it can only continue up to the trial, when the cause of action is merged in the judgment. The law which prohibits the dividing a cause of action and the bringing of a separ-te action
28 upon each part (Reynolds *v.* Jones, 38 S. W. Rep., 151) and merges the cause of action into the judgment is not changed by the act, which is not inconsistent with the rule in such cases.

The damages imposed by the act in question for a violation of the duty enjoined are commensurate with the violation and are within the limits of the discretion of the legislature. Like the penalty imposed by the act which was sustained by the court in State *ex rel.* Barton Co. *v.* Kansas City, Ft. S. & G. R. Co., 32 Fed. Rep., 722, they are large or small, as the delay to pay is of long or short duration.

Our attention has been called to Gulf, C. & S. F. R'y Co. *v.* Ellis, 17 Supreme Court Rep., 255. The statute involved in that case provided that railroad companies failing to pay claims for labor, damages, overcharges on freight, or for stock killed or injured by trains, amounting to less than fifty dollars, within thirty days after presentation thereof, and to reduce the same in a suit thereon, shall be liable for an attorney's fee not exceeding ten dollars. This penalty was not imposed because of the violation of any duty rightfully imposed upon railroad companies, but merely for the failure to defeat the recovery of the full amount of the claim sued on. It was not an amendment or in the nature of an amendment of the charter of railroad corporations, and if it was it does not appear to have been made by virtue of any power reserved to the legislature. The court held that it was unconstitutional, because it arbitrarily imposed a penalty upon a class of corporations which is not imposed upon others guilty of a like delinquency, and because it punishes a railroad company for defending a suit brought against it if it fails to defeat the recovery of the full amount sued for. The act was like that held by this court in St. Louis, Iron Mountain and Southern Railway Co. *v.* Williams, 49 Ark., 492, to
29 be unconstitutional. The act in question in that case provided for the appointment of a board to assess damages, and that if either party refused to abide by the assessment of the board and a suit was brought, the party refusing should be taxed with an attorney's fee in the event the judgment of the court should not be more favorable to him than the award of the board. This court held that the act was unconstitutional, because the legislature had no power to substitute boards of arbitration for the courts without the consent of the parties; that the courts organized under the constitution had exclusive jurisdiction to hear and determine all controversies referred to in the act and could not be deprived of it by the legislature.

But the act of March 25th is not subject to the same objections as the act involved in Gulf, C. — S. F. R'y Co. *v.* Ellis, *supra*. It does not arbitrarily impose a penalty, but it rightfully enjoins a duty and imposes a penalty for the failure to discharge the duty. It was enacted by the legislature in the exercise of the power to regulate railroad companies, for the advancement of the interest of the public, and for the protection of their employees against the unnecessary withholding of their earnings and consequent injuries.

Appellants deny that the legislature has the power to amend their charters except by enacting and publishing at length so much thereof as is amended. This contention is based on a section of the constitution which provides that "no law shall be revived, amended, or the provisions thereof extended or conferred by reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be enacted and published at length;" but it is not correct. It is well settled in this and other States where such constitutional limitations are in force that a statute repeals or

operates as an amendment of a prior law upon the same
30 subject to the extent they are in conflict, although the latter is not mentioned in the former. Scales *v.* State, 47 Ark., 481; Churchill *v.* Hill, 59 Ark., 54, 64; Leep *v.* Railway Company, 58 Ark., 407; People *v.* Mahoney, 13 Mich., 481, 496–7; Lehman *v.* McBride, 15 Ohio St., 573; Shields *v.* Bennett, 8 W. Va., 74, 87; Baum *v.* Raphael, 57 Cal., 361; Denver Circle R. Co. *v.* Nestor, 10 Col., 405; Everham *v.* Hulit, 45 N. J. L., 53; Sheridan *v.* Salem, 14 Oregon, 328, 337; Davis *v.* State, 7 Md., 151; Corley on Const. Lim. (6th ed.), 182; 1 Thompson on Corporations, sec. 94, and cases cited.

We therefore conclude that the act of March 25th, so far as it effects corporations, does not violate the fourteenth amendment of the Constitution of the United States nor the constitution of the State of Arkansas, and to that extent is a valid act.

The judgments appealed from are affirmed.

[Endorsed:] Chas. Paul *adv.* St. L., I. M. & So. R'y. Copy of opinion of S. Ct. of Ark.

31 In the Supreme Court of Arkansas.

St. Louis, Iron Mountain & Southern Railway Company, Plaintiff in Error, *vs.* Charles Paul, Defendant in Error.	No. 2921.

Assignment of Errors.

Comes the plaintiff in error, The St. Louis, Iron Mountain & Southern Railway Company, and files herein its assignment of errors.

1st. The court erred in holding that the act of the General Assembly of the State of Arkansas entitled "An act to provide for the protection of servants and employés of railroads," approved March 25th, 1889 (and found on page 76 of the Pamphlet Acts of the State of Arkansas for 1889), was not repugnant to that clause of section 1 of the 14th amendment to the Constitution of the United States which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

2nd. That the court erred in holding that said act was not repugnant to that clause of the 14th amendment to the Constitution of the United States which declares that "no State shall * * * deny to any person within its jurisdiction the equal protection of the laws."

3rd. That the court erred in holding that said act was not repugnant to that part of the 5th amendment to the Constitution of the United States which provides that "no person shall be deprived of life, liberty, or property without due process of law."

32 4th. That the court erred in holding that said act was not repugnant to that clause of the 5th amendment to the Constitution of the United States which declares that no property "shall be taken for public use without just compensation."

Wherefore, for the errors above assigned, the plaintiff in error, appellant herein, prays that the judgment rendered in this case be reversed, set aside, and held for naught.

DODGE & JOHNSON,
Attorneys for Appellant and Plaintiff in Error.

Filed May 22d, 1897.

P. D. ENGLISH, *Clerk.*

33 Supreme Court of Arkansas.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Appellant,
vs.
CHARLES PAUL, Appellee.

Bond.

Know all men by these presents that we, the undersigned, are held and firmly bound unto Charles Paul in the penal sum of one thousand dollars, yet upon condition that Geo. E. Dodge and B. S. Johnson—

Whereas the said St. Louis, Iron Mountain & Southern Railway Company has sued out a writ of error for the reversal of a judgment rendered against it in favor of Charles Paul by the supreme court of the State of Arkansas, and a citation has been issued directing the said Charles Paul to appear at the Supreme Court of the United States, to be held at Washington, on the second Monday of October next:

Now, if the said St. Louis, Iron Mountain & Southern Railway Company shall prosecute its said writ of error to effect and answer all damages and costs that may be adjudged against it if it fails to make its plea good, then the above obligation to be void; else to remain in full force.

Witness our hands this 22d day of May, 1897.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
By DODGE & JOHNSON, *Its Attorneys.*
B. S. JOHNSON.
GEO. E. DODGE.

Approved and filed May 22, 1897.

HENRY G. BUNN,
Chief Justice.

[Endorsed:] Filed May 22d, 1897. P. D. English, clerk.

34 STATE OF ARKANSAS:

In the Supreme Court.

I, Peyton D. English, clerk of the supreme court of Arkansas, do hereby certify that the foregoing 34 pages contain a true, perfect, and compared transcript of the record and proceedings in said court in the cause therein stated.

Seal of the Supreme Court of Arkansas.

In testimony whereof I, as such clerk, hereto set my hand and affix the seal of said court, at my office, in the city of Little Rock, Arkansas, this the 25th day of May, A. D. 1897.

P. D. ENGLISH, *Clerk.*

Endorsed on cover: Case No. 16,604. Arkansas supreme court. Term No., 391. The St. Louis, Iron Mountain and Southern Railway Company, plaintiff in error, *vs.* Charles Paul. Filed June 5th, 1897.

No. 120.

By of Dillon, Pierce & Duncan

Filed Jan. 3, 1889.

FILED
JAN 3 1889
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, *Plaintiff in Error,*
vs.
CHARLES PAUL.
No. 120.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

Brief for Plaintiff in Error.

JOHN F. DILLON,
WINSLOW S. PIERCE,
DAVID D. DUNCAN,
Counsel for Plaintiff in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1898.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff in Error, vs. CHARLES PAUL.	No. 120.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

This action was begun in a Justice's Court in Saline Township, Saline County, Arkansas, by Charles Paul against the The St. Louis, Iron Mountain and Southern Railway Company, a corporation under the laws of Arkansas.

The defendant appealed from the judgment of the Justice in favor of the plaintiff, and there was a trial *de novo* in the Circuit Court of Saline County. Plaintiff alleged (Tr., p. 3) that on March 28, 1894, he hired to defendant as a laborer at the wages of $1.25 per day and performed 30½ days' labor, when, on May 4, 1894, he was discharged by the defendant, there being then due him on account of his wages, less certain credits,

the sum of $21.80. He further alleged that defendant failed to pay him said sum on said last-named day and had refused to pay the same up to the time suit was brought, and that there had been 39 working days since he was discharged for which "by law he is entitled to the sum of $1.25 per day as a penalty for said failure to pay on said day of discharge."

The Act under which the penalty is claimed is as follows:

[Laws of Arkansas, 1889, page 76.]

ACT LXI.

AN ACT to Provide for the Protection of Servants and Employes of Railroads.

SECTION 1. Liabilities of railroads or other corporations in case of discharge of employes for withholding their wages; *proviso.*
2. Avoidance of payment by servant or employe.
3. How employe may proceed in case of wrongful discharge.
4. Act in force from passage.

Be it enacted by the General Assembly of the State of Arkansas:

SECTION 1. Whenever any railroad company or any company, corporation or person engaged in the business of operating or constructing any railroad or railroad bridge, or any contractor or sub-contractor engaged in the construction of any such road or bridge, shall discharge, with or without cause, or refuse to further employ any servant or employe thereof, the unpaid wages of any such servant or employe, then earned at the contract rate, without abatement or deduction, shall be, and become due and payable on the day of such discharge, or refusal to longer employ; and if the same be not paid on such day then, as a penalty for such non-payment, the wages of such servant or employe shall continue at the same rate until paid. *Provided*, Such wages shall not continue more than sixty days, unless an action therefor shall be commenced within that time.

SEC. 2. That no such servant or employe who secrets or absents himself to avoid payment to him, or

refuses to receive the same when fully tendered, shall be entitled to any benefit under this act for such time as he so avoids payment.

SEC. 3. That any such servant or employe whose employment is for a definite period of time, and who is discharged without cause before the expiration of such time may, in addition to the penalties prescribed by this act, have an action against any such employer for any damages he may have sustained by reason of such wrongful discharge, and such action may be joined with an action for unpaid wages and penalty.

SEC. 4. That this act shall take effect and be in force from and after its passage.

Approved March 25, 1889.

Defendant demurred to so much of the complaint as sought to recover the penalty (Tr., pp. 3, 4) on the ground that the act under which it was claimed is violative of Articles 5 and 14 of the amendments to the Constitution of the United States and of certain sections of the Constitution of the State of Arkansas. This demurrer was overruled (Tr., p. 6) and defendant filed an answer (Tr., pp. 4, 5), in which it admitted that it owed plaintiff $22.50, and interest thereon from the date of his discharge on account of his wages, and offered to confess judgment for that sum. Defendant further answered that plaintiff when discharged directed that his time check be sent to the agent at Benton for payment, which was done; that he did not give defendant an opportunity to pay him, but kept out of the way until the day before he brought suit, when defendant did not refuse to pay him his wages, but required him to be identified as the party to whom the wages were due, which was reasonable and necessary; and in Paragraph III. alleged that plaintiff was not entitled to recover any amount as a penalty for the reason that the Act of March 25, 1889, under which the penalty was claimed, is unconstitutional and void, in that it is

violative of Articles 5 and 14 of the amendments to the Constitution of the United States and of certain sections of the Constitution of Arkansas.

Plaintiff demurred to the third paragraph of the answer and the demurrer was sustained (Tr., p. 6).

The case was heard by the Court sitting as a jury—the parties having waived a trial by jury—and the Court found that plaintiff was " entitled to recover the sum of $21.80, his debt, and the further sum of $48.75 as a penalty for failure to pay him at the time of his discharge, being at the rate of $1.25 per day from the date of his discharge until the 18th day of June, the date of the commencement of this suit " (Tr., p. 7). Judgment was accordingly entered against the defendant for $70.55 with costs (Tr., p. 7).

Defendant appealed to the Supreme Court of the State of Arkansas from the action of the Circuit Court in overruling defendant's demurrer to the complaint and in sustaining plaintiff's demurrer to the answer. That Court followed the principle announced by it in *Leep vs. St. Louis, I. M. & S. Ry. Co., 58 Ark., 407*, in which the constitutionality of the same statute was passed upon. It was there held that *while the Act was void and unconstitutional as to individuals it was constitutional as to railroad companies as being an exercise of the power of the Legislature to amend corporate charters.*

The judgment of affirmance which was entered (Tr., p. 9) is now brought here for review by writ of error.

Assignments of Error.

I.

The Court erred in holding that the act of the General Assembly of the State of Arkansas, entitled "An Act to provide for the protection of servants and employees of railroads," approved March 25th, 1889 (and found on page 76 of the Pamphlet Acts of the State of Arkansas for 1889), was not repugnant to that clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

II.

That the Court erred in holding that said act was not repugnant to that clause of the Fourteenth Amendment to the Constitution of the United States which declares that "no State shall * * * deny to any person within its jurisdiction the equal protection of the laws."

III.

That the Court erred in holding that said act was not repugnant to that part of the Fifth Amendment to the Constitution of the United States which provides that "no person shall be deprived of life, liberty or property without due process of law."

IV.

That the Court erred in holding that said act was not repugnant to that clause of the Fifth Amendment to the Constitution of the United States which declares that no property "shall be taken for public use without just compensation."

BRIEF.

I.

The Act of the Legislature of Arkansas of March 25th, 1889, is unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States.

The plaintiff was not employed for any definite time. He was a "day laborer." The Court below so says (Rec., p. 10). That is, the plaintiff was hired only for a day. At the end of a day the company cannot *discharge* him, for he stands discharged by limitation of time. The most it can do is to refuse to employ him any longer. When he says here that he was *discharged*, he alleges what, being a day laborer, cannot possibly be true. He does not allege that he demanded payment when he says he was discharged or at any other time. Let us see what this statute erects into a penalty against a railway employer. The company hires a laborer for a day. The time is up at the end of the working day. He does not demand his pay, and the company does not pay him. Under such circumstances the statute as against railway companies enacts that, "as a penalty for such non-payment the wages of such servant or employe shall continue at the same rate until paid," if an action therefor shall be commenced within sixty days. It so enacts whether the servant be "discharged with or without cause."

And even if discharged for cause, the statute enacts that the unpaid wages at the contract rate, "without abatement or deduction," shall become instantly due

and shall be paid or the penalty denounced by the statute is incurred. Nay, further. This penalty is incurred for a refusal further to employ the servant or employe, although originally employed for a day only or by the day so long as the employer sees fit.

In *Leep vs. St. Louis, I. M. & S. Ry., 58 Ark., 407*, the Supreme Court of Arkansas said of this very statute: "In other words, it declares the wages shall be paid on such day, *notwithstanding they may not be due according to the contract until a day subsequent.*"

Let us look at the reverse side and see what provision is made in case the servant or employe is in the wrong. Suppose he refuses to be longer employed, or quits before the contract period expires, without cause. The statute not only does not give a corresponding remedy against him, but it provides on the contrary that if the company does not then and there instantly pay the full amount at the contract rate the penalty denounced by the statute against the company is incurred. It thus deprives the company of the right to recover damages for the servant's breach of the contract. But it gives the servant who is in the right not only the penalty (Sec. 1) but *damages in addition* "sustained by reason of such wrongful discharge" (Sec. 4). How is it possible to say that such an act does not "deny" to the company "the equal protection of the law?" With such a flagrant discrimination against the company and in favor of the employe how can it be said that they have equal rights before the law?

In the case of *Leep* against the *Iron Mountain Railway Company* the Supreme Court of Arkansas decided that this very Act of March 25, 1889, was so flagrantly violative of the aboriginal, basic and fundamental

rights of natural persons that as to them it was unconstitutional and void (58 Ark., 407). And the narrow, although transcendently important question on this record is whether an Act void for such reasons as to individuals is yet good as to corporations. In other words, whether as respects corporations the legislative power is unbounded and extends to the destruction or denial of such fundamental rights as in the case of natural persons renders the Act unconstitutional?

It is settled that corporations are "persons," within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Smyth vs. Ames, 169 U. S, 466, 522.
Gulf, Col. & Santa Fe Ry. vs. Ellis, 165 U. S., 150, 154.
Charlotte, C. & A. R. R. vs. Gibbs, 142 U. S., 386, 391.
Santa Clara Co. vs. Southern Pacific, 118 U. S., 394, 396.

The Act of March 25th, 1889, is clearly in violation of the Fourteenth Amendment and is unconstitutional under the ruling in

Gulf, Colorado & Santa Fe Ry. vs. Ellis, 165 U. S., 150.

The statute under review in the case last above cited was, as to the principles involved, precisely similar to the act now before this Court. It enacted: "That after the time when this act shall take effect any person in this State having a valid, *bona fide* claim for personal services rendered or labor done or for damages," &c., "against any railway corporation operating a railroad in this State" might present a verified claim, and that if the same was not paid within thirty days thereafter

he might institute suit therefor, and that upon obtaining judgment for the full amount he should be entitled to recover the amount of the claim, the costs and, in addition, a reasonable attorney's fee, not exceeding ten dollars.

Mr. Justice BREWER, delivering the opinion of this Court, said (p. 153):

"The Supreme Court of the State considered this statute as a whole and held it valid, and as such it is presented to us for consideration. Considered as such, it is simply a statute imposing a penalty upon railroad corporations for a failure to pay certain debts. No individuals are thus punished, and no other corporations. The act singles out a certain class of debtors and punishes them, when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. They cannot appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favor they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms. They must pay attorney's fees if wrong; they do not recover any if right; while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties, they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute."

In the case at bar an attempt is made to impose upon the railroad companies a penalty for not paying a discharged employe on the day of the discharge in case he recovers judgment for his wages, but the companies are not entitled by the Act in question to recover anything from the employe in case he fails in his suit. In this respect the two cases are on all-fours.

The opinion then proceeds to discuss the question of classification. On this point the Court said (p. 157):

"If it be said that this penalty is cast only upon corporations, that to them special privileges are granted, and therefore upon them special burdens may be imposed, it is a sufficient answer to say that the penalty is not imposed upon all corporations. The burden does not go with the privilege. Only railroads of all corporations are selected to bear this penalty. The rule of equality is ignored."

Discussing the validity of the Act as a police regulation this Court further said (pp. 158, 159):

"But a mere statute to compel the payment of indebtedness does not come within the scope of police regulations. *The hazardous business of railroading carries with it no special necessity for the prompt payment of debts. That is a duty resting upon all debtors, and while in certain cases there may be a peculiar obligation which may be enforced by penalties, yet nothing of that kind springs from the mere work of railroad transportation.* Statutes have been sustained giving special protection to the claims of laborers and mechanics, but no such idea underlies this legislation. It does not aim to protect the laborer or the mechanic alone, for its benefits are conferred upon every individual in the State, rich or poor, high or low, who has a claim of the character described. *It is not a statute for the protection of particular classes of individuals supposed to need protection, but for the punishment of certain corporations on account of their delinquency.*"

As to the legality of the Act as a proper means of enforcing the payment of small debts it was said (p. 159):

"Neither can it be sustained as a proper means of enforcing the payment of small debts and preventing any unnecessary litigation in respect to them, because it does not impose the penalty in all cases where the amount in controversy is within the limit named in the statute. Indeed, the statute arbitrarily singles out one class of debtors and punishes it for a failure to per-

form certain duties—duties which are equally obligatory upon all debtors; a punishment not visited by reason of the failure to comply with any proper police regulations, or for the protection of the laboring classes or to prevent litigation about trifling matters, or in consequence of any special corporate privileges bestowed by the State. Unless the legislature may arbitrarily select one corporation or one class of corporations, one individual or one class of individuals, and visit a penalty upon them which is not imposed upon others guilty of like delinquency, this statute cannot be sustained."

In reviewing cases bearing upon the questions before the Court a case decided by the Court of Appeals of Texas was commented upon as follows (p. 163):

"In San Antonio, &c., Railway vs. Wilson, 19 S. W. Rep., 910, the Court of Appeals of Texas held that a statute providing that in the event of a railroad company's refusing to pay its indebtedness to an employe within twenty days after demand, he could recover as damages twenty per cent. in addition to the amount due, was class legislation and unconstitutional. In the course of the opinion, after referring to those statutes allowing double damages 'for stock killed, the Court observed: **'But when we consider the relations of railway companies to their own servants, both as to contracts of employment and payment, we find a field in which special legislation has no right ordinarily to enter, and in which railways stand on the same footing with all other corporations or persons.'**"

Mr. Justice BREWER's opinion concludes (pp 165, 166):

"It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.

Tested by these principles, the statute in controversy cannot be sustained."

This decision, the latest pronounced by this Court upon the principles involved, we regard as conclusive of the case at bar.

The Supreme Court of Arkansas in its opinion (Tr., pp. 10-18) conceded that as an act relating to "persons," the Act of March 25th, 1889, is unconstitutional; but it held (Rec., p. 11) that corporations "are not entitled to all the rights of natural persons," and that the act in question is a lawful exercise of the right of the Legislature to amend the charters of railway corporations; and on this ground alone sustained the Act, and affirmed the judgment in the plaintiff's favor.

To this point we now turn our attention.

II.

The Act of March 25, 1889, cannot be sustained as constitutional and not violative of the Fourteenth Amendment to the Constitution of the United States on the theory that it is an exercise of the power granted by the Constitution of the State of Arkansas to the Legislature of that State to alter or amend the charters of corporations.

As we have said above, the Supreme Court of Arkansas upheld the constitutionality of the Act in-

volved in this case wholly upon the ground that it was amendatory of the general law relating to railway corporations—an alteration or modification of the franchises granted to railroad companies by that State.

This contention, in its essence, proclaims the law to be that railway companies, conceded to be "persons" within the meaning of the Fourteenth Amendment, may be deprived of rights, which other "persons" may exercise under the protection of that amendment; that the employes of railroad companies have rights which are denied to the employes of individuals or partnerships even though engaged in the same business, and performing the same duties. This is an astounding proposition, and yet it is the law of Arkansas, and will continue so to be until the decision of the Supreme Court of that State is reversed by this Honorable Court. The court rests its judgment sustaining the Act as to railway companies solely on the ground of the reserved power of the General Assembly under Section 6, Art. 12 of the Constitution of the State, quoted and discussed below.

The opinions of the Supreme Court of Arkansas in this and in the *Leep* case present this anomaly; they discuss the statute in question *as an independent act* and unanimously hold it to be unconstitutional as to all "persons" under the Fourteenth Amendment; they then shift their ground and viewing it as an alternation or amendment of the railroad laws of the State hold it, by a divided Court, to be constitutional as to corporations operating railroads. The result appears in the mutilated remains of the statute as promulgated in the opinion in the *Leep* case and copied in the opinion in this case (Rec. p. 10).

Examining the act itself, nothing whatever appears to show that it was intended to be, or in fact was, an amendment to the general railroad law of the State, or of any charter granted by the State to railway companies. The only intrinsic evidence of the purpose of the Legislature in passing the act is that furnished by its title—"An act to Provide *for the Protection of Servants and Employes* of Railroads." As it stands, and if interpreted in accordance with the wording of its title, it would apply to all railroads within the State of Arkansas whether owned and operated by corporations created by that State or by authority of the United States or other States, or whether operated by individuals or copartnerships; whereas, if the interpretation of the Supreme Court of Arkansas prevails, the act can apply in favor only of the employes of railroads incorporated by that State, since the Legislature of Arkansas has no power to amend the charters of other corporations, with the obvious result of seriously discriminating against the employes of foreign corporations, whether Federal or State, and against those of roads owned and operated by individuals or firms. Under the decision of the Supreme Court of Arkansas the employes of a railroad organized under the General Railroad Law of Arkansas would be able to avail themselves of the rights provided for in the act, but the employes of a private road built and owned by the proprietors of a coal mine over their own property and used to transfer coal from their mine to the same road would have no such rights. Under the decision of this Court in *Gulf, Colo., &c., Ry. Co. vs. Ellis, supra*, an act having such an effect would undoubtedly be unconstitutional.

The danger of sustaining statutes which, taken by

themselves and considering only their effect, are unconstitutional, by resorting to the right of a State to amend the charters of corporations or the general laws relating to corporations, is too apparant to call for comment. A door is in this way opened by which the beneficent provisions of the Constitution for the protection of persons and property—the bulwarks of equal rights and privileges—may be nullified and destroyed. If the judgment now under review shall be sustained by this Court, which is the guardian of the persons and property of all the inhabitants of the United States against inequality of rights, what may we not look for in the way of class legislation and discrimination? You may open the door, but once opened who shall be able to shut it? Any statute, however obnoxious to the Fourteenth Amendment, may be enforced, provided it can, by subtle reasoning or arbitrary ruling, be held to be an amendment or alteration of a franchise granted to a corporation. We deny that under the reserved power, especially the limited reserved power in the State of Arkansas, the General Assembly can destroy or deny rights otherwise protected by the Fourteenth Amendment of the National Constitution.

A STATE CANNOT, THROUGH ITS RESERVED POWER TO AMEND CORPORATE CHARTERS WHETHER GENERAL OR SPECIAL, WITHDRAW CORPORATIONS FROM THE GUARANTIES OF THE CONSTITUTION OF THE UNITED STATES.

In *The Railroad Tax Cases*, 13 *Fed. Rep.*, 722, Mr. Justice FIELD said (p. 754):

"In the second place, the state, in the creation of corporations, or in amending their charters, or, rather, in passing or amending general laws under which cor-

porations may be formed and altered, possesses no power to withdraw them when created, or by amendment, from the guaranties of the federal constitution. It cannot impose the condition that they shall not resort to the courts of law for the redress of injuries or the protection of its property; that they shall make no complaint if their goods are plundered and their premises invaded; that they shall ask no indemnity if their lands be seized for public use or be taken without due process of law, or that they shall submit without objection to unequal and oppressive burdens arbitrarily imposed upon them; that, in other words, over them and their property the state may exercise unlimited and irresponsible power. *Whatever the state may do, even with the creations of its own will, it must do in subordination to the inhibitions of the federal constitution.* It may confer, by its general laws, upon corporations certain capacities of doing business and of having perpetual succession in their members. It may make its grant in these respects revocable at pleasure; it may make the grant subject to modifications and impose conditions upon its use, and reserve the right to change these at will. But whatever property the corporations acquire in the exercise of the capacities conferred they hold under the same guaranties which protect the property of individuals from spoliation. It cannot be taken for public use without compensation. It cannot be taken without due process of law, nor can it be subjected to burdens different from those laid upon the property of individuals under like circumstances."

In County of Santa Clara vs. Southern Pacific R. Co., 17 Fed. Rep., 385, 398, he also said :

" With the adoption of the amendment the power of the States to oppress any one under any pretense or in any form was forever ended; and, henceforth, all persons within their jurisdiction could claim equal protection under the laws. And by equal protection is meant equal security to every one in his private rights—in his right to life, to liberty, to property, and to the pursuit of happiness. It implies not only that the means which the laws afford for such security shall be equally accessible to him, but that no one shall be subject to any greater burdens or charges than such as are imposed upon all others under like circumstances. *This*

protection attends every one everywhere, whatever be his position in society or his association with others, either for profit, improvement or pleasure. It does not leave him because of any social or official position which he may hold, nor because he may belong to a political body, or to a religious society, or be a member of a commercial, manufacturing or transportation company. It is the shield which the arm of our blessed government holds at all times over every one—man, woman and child—in all its broad domain, wherever they may go and in whatever relations they may be placed. No state—such is the sovereign command of the whole people of the United States—no state shall touch the life, the liberty or the property of any person, however humble his lot or exalted his station, without due process of law; and no state, even with due process of law, shall deny to any one within its jurisdiction the equal protection of the laws."

In the Sinking Fund cases, 99 U. S., 700, the same distinguished judge, in a dissenting opinion, stated the law on this point with notable clearness (p. 758):

"There have been much discussion and great difference of opinion on many points as to the meaning and effect of a similar reservation in statutes of the States, but on the point that it does not authorize any interference with vested rights all the authorities concur. Such was the language of Chief-Justice SHAW in the case cited from the Supreme Court of Massachusetts; and such is the language of Mr. Justice CLIFFORD in the cases cited from this court. And such must be the case, or there would be no safety in dealing with the government where such a clause is inserted in its legislation. It could undo at pleasure everything done under its authority, and despoil of their property those who had trusted to its faith Commonwealth vs. Essex Company, 13 Gray [Mass.], 239; Miller vs. The State, 15 Wall., 478; Holyoke Company vs. Lyman, *id.*, 500; See, also, Shields vs. Ohio, 95 U. S., 319, and Sage vs. Dillard, 15 B. Mon. [Ky., 349].

"*The object of a reservation of this kind in acts of incorporation is to insure to the government control over corporate franchises, rights and privileges which, in its sovereign or legislative capacity, it may call into existence, not to interfere with contracts which the corpora-*

tion created by it may make. Such is the purport of our language in Tomlinson vs. Jessup, where we state the object of the reservation to be 'to prevent a grant of *corporate* rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference,' and that 'the reservation affects the entire relation between the State and corporation, and places under legislative control all rights, privileges and immunities *derived by its charter directly from the State.*' (15 Wall., 454). The same thing we repeated, with greater distinctness, in Railroad Company vs. Maine, where we said that by the reservation the State retained the power to alter the act incorporating the company, in all particulars *constituting the grant to it of corporate rights, privileges and immunities;* and that "the existence of the corporation, and its franchises and immunities, derived directly from the State, were thus kept under its control.' But we added that '*rights and interests acquired by the company, not constituting a part of the contract of incorporation, stand upon a different footing*' (96 U. S., 499)."

United States vs. Union Pacific Ry. Co., 160 U. S., 1, Mr. Justice HARLAN (p. 33):

"It would not be competent for Congress, under the guise of altering and amending the act in question, to impose upon the railroad company duties wholly foreign to the objects for which it was created, or for which governmental aid was given. Neither could it, by such alteration or amendment, destroy rights actually vested, nor disturb transactions fully consummated. We may here, not inappropriately, repeat what was said in the Sinking Fund Cases, 99 U. S., 700, 718, 719, 720, that 'this power has a limit,' and 'cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made.'"

People vs. O'Brien, 111 N. Y., 1, RUGER, Ch. J. (p. 36):

"Whatever might have been the intention of the legislature, or even of the framers of our Constitution,

in respect to the effect of the power of repeal reserved in acts of incorporation, upon the property rights of a corporation, *such power must still be exercised in subjection to the provisions of the Federal Constitution.*"

And (p. 48):

"It would seem to be quite obvious that a power existing in the legislature by virtue of a reservation only could not be made the foundation of an authority *to do that which is expressly inhibited by the Constitution*, or afford the basis of a claim to increase jurisdiction over the lives, liberty or property of citizens beyond the scope of express constitutional power."

The power invoked by the Supreme Court of Arkansas to sustain its position is quoted in the opinion of that Court (Rec., p. 11), being section 6 of Article XII. of the Constitution of Arkansas, as follows:

"The General Assembly shall have the power to alter, revoke or amend any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever, in its opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators."

A conclusive answer to this position is, that the Legislature never dreamed that in passing the Act of March 25, 1889, it was exercising this reserved power to amend the charter of the defendant railway company or the charter of railway companies generally. The Act does not profess to exercise any such reserved power. On the contrary, both by its title and its substance it negatives any such pretensions. It is in no sense an amendment of railway charters. It does not relate to any *franchise*. It includes contractors and sub-contractors for the building of any railway *or railway bridge*, thus showing that the Legislature was not proceeding on the ground

that it was amending railway charters. It is simply a statute imposing a penalty for the non-payment of a debt at a particular time.

Even if this statute were an exercise of a reserved right to amend the charter of the defendant company, it will be noticed that the reserved power is not unlimited. It must be exercised so as "*to do no injustice to the corporators.*"

Is it not reasonable to assume that this limitation was intended to secure to corporations the same rights and privileges as are given to other "persons"? In the light of this provision is not the construction of the Act in question by the Supreme Court of Arkansas an "injustice to the corporators"? Why was this limitation of the power to alter or amend charters fixed in the fundamental law of the State if equal rights with individuals were not to be accorded to corporations?

This Act is so invidious, so flagrantly unjust to railway companies (alone selected for arbitrary punishment for non-payment of a debt though payment be not demanded) cannot be sustained as a valid exercise of the reserved power to amend railway charters.

We make the above specific objection to the statute and invoke the Court's judgment upon it.

Moreover, the reserved power is confined to cases where, in the opinion of the General Assembly, the franchises to be altered, amended or revoked are "injurious to the citizens" of the State. Is there anywhere in this case any evidence that the franchises of railway corporations held to be altered or amended by the Act of March 5th, 1889, were injurious to the citizens of Arkansas? There only appears a forced assumption of such a claim grow-

ing out of the fact that the Court held the act to be an amendment to the railroad law of the State. Instead of basing the right to amend on the injurious character of the law to be amended, we have to infer such injurious character of the law as it stood from the fact that the Supreme Court of the State says the Act of March 25th is an amendment. It could not be an amendment unless the law amended was, in the opinion of the Legislature, injurious to the citizens of the State, so the Supreme Court of the State, in effect, says that, as it holds the statute to be an amendment, the amended law must, in the opinion of the Legislature, have been injurious to the citizens of the State. The assumption cannot, however, go so far as to include all the citizens of the State because, by the terms of the act, its operation is confined to such persons as are employes of the operators of railroads, and, by the decision under review, its operation is still further confined to such citizens as are employes of the railroad companies which are the creations of the laws of Arkansas, because that State has no power to alter or amend the charters of other corporations.

Again, it does not appear what particular part of the General Railroad Law of the State was amended by the Act of March 25th, 1889. Was there any provision of that law whereby the right of employes of railroad companies, in respect of the time of the payment of their wages, differed in any respect from the rights of the employes of other corporations or of any other employes? If so, why was not that particular part of the general law referred to in the amending act? Why was it not pointed out in the proceedings below or in the opinion of the State Supreme Court?

In this connection we call attention to the dissenting

opinion of BUNN, Ch. J., in *Leep vs. St. L. I. M. & S. Ry. Co., 58 Ark., 407*, in which he said:

"It will be observed that the act in question does not in terms refer to any other statute, and this being so, can any other statute be said to be amended by it?

"Section 23, Article 5, of the constitution [of Arkansas], is in these words, viz.: 'No law shall be revived, amended or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be reinstated and published at length.'

"Now, if a law referring to a previous law, by title only, is not to be considered as amendatory of it, how much more true is it that the subsequent law which does not refer even to the title of a former law is not amendatory to the existing or former law?

The prohibition contained in this section of the constitution was not meant as an idle saying—a mere flourish of high-sounding words—but was intended to subserve a great purpose—the protection of the citizen against surreptitious legislation. Nor has this Court nor the Courts of other States treated this and similar provisions as light and meaningless things. Beard vs. Wilson, 52 Ark., 290; Havis vs. Jefferson, 14 S. W. Rep. (Ark.), 1101; Watkins vs. Eureka Springs, 49 Ark., 131; Judson vs. Bessemer, 6 So. Rep., 267; Board Fire Coms. vs. City of Trenton, 22 Atl. Rep., 731; Board of Coms. vs. Aspen Mining Co., 32 Pac. Rep., 717.

From the decisions on the subject we gather this principle, that an act, as an independent law, may not be objectionable on constitutional grounds and yet as an amendment of some existing law it may be invalid. The rule is a reasonable one, because no law should be altered or amended without something appears in the amendatory act to give notice to the public of a change in the original law, while if the new act is intended as an independent act, the original act is not affected, and there is nothing to take notice of.

"This, perhaps, is enough to say on this part of the subject. The majority of the court treating the act in question as an independent act, would hold it unconstitutional for reasons assigned in the opinion, which reasons we think sound and incontrovertible. But the majority of the court, treating the act in question as amendatory of our general incorporation laws (the

court does not say which one, for there are two or more), holds it to be constitutional under the power reserved to the legislature, in the last sentence, Section 6, Art. 12 of the constitution, and I have endeavored to show that the act can have no place as an amendment, because it does not show a compliance with the constitution in the manner of its enactment as such amendment."

Unless defendant in error shows that the act under consideration is an amendment of some particular part of the General Railroad Law of Arkansas it cannot be sustained as being constitutional. If he claims that the act is merely a change in the common law rights of employes generally, but applicable only to those of railroad companies, the case falls within the ruling of *Gulf, Colorado & Santa Fé. vs. Ellis* as being a clear violation of the Fourteenth Amendment of the Constitution, and the judgment of the Court below must be reversed.

In the case of *Leep* vs. St. Louis, I. M. & S. Ry. Co., *supra*, the Supreme Court of Arkansas referred to and relied upon certain authorities, which we briefly review.

And first it is to be noted that the power to amend or alter corporate charters in the States in which these decisions were rendered, is limited only by the "pleasure" or "will" of the legislature, while in Arkansas, as we have seen *(ante*, p. 19*)*, the legislature can only alter or amend charters "whenever, in its opinion, *it may be injurious to the citizens of this State;* in such manner, however, that *no injustice shall be done to the corporators.*"

The case of the *Commissioners, &c., vs. Holyoke Water Power Company, 104 Mass., 446 (1870)*, obviously, on examination, has no favorable bearing whatever on the present case. It appears from the opinion of GRAY, J., in the case cited, page 450, that

"Every grant of a right to maintain a mill-dam across a stream where such [migratory] fish are accustomed to pass is subject to the condition or limitation that a sufficient and reasonable way shall be allowed for the fish, unless cut off by express provision or obvious implication in the grant. This is settled by a series of cases" (citing).

From 1830, by general legislation, it was enacted that every charter shall "at all times be subject to amendment, alteration or repeal at the pleasure of the legislature" (p. 451).

With this act in force, the Legislature granted to the Hadley Falls Company the power to build a dam across the Connecticut River, the charter not expressly exempting it from maintaining a dam without a fishway. By subsequent legislation the Commissioners were authorized to require dams to be constructed with fishways, and it was held that this legislation was constitutional as against the Hadley Power Company or its assignee. The whole conclusion is summed up by GRAY, J., in these words (461):

"Upon the whole case, taking into consideration the terms of the charter of the Hadley Falls Company, and the power of alteration, amendment and repeal previously reserved to the Legislature by the public statutes of the Commonwealth, we are unanimously of opinion that the Legislature has not surrendered or restricted its inherent power of regulating and protecting the fisheries."

Special reliance seems to be placed by the Supreme

Court of Arkansas on the case of *Shaffer and Munn vs. Union Mining Company, 55 Maryland*, 74 (1880.) A careful examination of this case will show that nothing necessarily decided in that case has any essential bearing on the present case. The plaintiffs Shaffer and Munn, being the assignees of choses in action from employes of the defendant the Union Mining Company, these assignments having been accepted by the defendant, brought suit against it to recover the amounts due on them. The only point decided, as to the right of the plaintiffs to recover, necessary for a decision, was whether the Act of 1880, Chapter 273, was intended to restrict and does restrict the powers of employes of the corporation so as to prevent their assigning what was due to them from the mining company to the plaintiffs; and, if it was so intended, was it competent for the Legislature to impose such restriction (p. 79)? The Court of Appeals of Maryland held that the Act of 1880 was not intended to restrict such power of assignment and reversed the judgment below, which held otherwise, and remanded the case for a new trial. The Court had no occasion to consider the powers of the Legislature to pass the Act of 1880 as respects duties which it imposed upon mining, manufacturing or railway companies as to the payment of wages in money, and all that is said by the Court on that subject is *obiter*. There is no discussion or decision in the case touching the right to the equal protection of the laws under the 14th Amendment.

The Supreme Court of Arkansas also seems to place special reliance upon the case of the *State vs. Brown & Sharpe Manufacturing Co.*, decided by the Supreme Court of Rhode Island, October 3d, 1892 (25 Atlantic Reporter, 246).

In that case the legislation of the State provided that all acts of incorporation "hereafter granted may be amended or repealed at the will of the General Assembly," and with that act in force the defendant manufacturing company was organized. Afterwards, March 4th, 1891, the Legislature passed Public Laws, Chap. 918, entitled "An Act providing for weekly payments to employes of corporations," which is as follows:

SECTION 1. Every corporation, other than religious, literary or charitable corporations, and every incorporated city, but not including towns, shall pay weekly the employes engaged in its business the wages earned by them to within nine days of the date of such payment, unless prevented by inevitable casualty; provided, however, that, if at any time of payment any employe shall be absent from his place of labor, he shall be entitled to said payment at any time thereafter on demand.

Section 2 makes a violation of the foregoing provisions penal.

Section 3 declares that the act should take effect May 1st, 1891.

This was the whole enactment. It will be seen that it applies by its terms to all corporations, except religious, literary and charitable corporations, also to incorporated cities, and assuming that the Court is right in holding that an act requiring such weekly payment to within nine days unless prevented by inevitable casualty was within the competency of the Legislature and did not contravene the 14th amendment, it has no essential bearing on the case at bar. Why? Because this act did not make the invidious distinctions made by the Arkansas statute. It applies to all corporations except those of an eleemosynary nature and small municipalities. The classification of

corporations to be effected by it is a proper one and within the rules as laid down by this Court, whereas the Arkansas statute now under review so clearly contemplates an illegal classification that the Supreme Court of Arkansas holds it to be unconstitutional on that account.

As to the cases cited in the opinion of the Court below in this case it is sufficient to say that, in the *Sinking Fund cases, 99 U. S., 700,* the act under consideration was admittedly an amendment to the charter of the company. Its title recited that fact (99 U. S., 710).

The statute construed in *Missouri Pacific Ry. Co. vs. Mackey, 127 U. S., 205,* was sustained as not being in itself a violation of the Fourteenth Amendment. It was not sustained as an amendment to the charter of the railway company.

The statute involved in *Barton Co. vs. Kansas City, Ft. S. & G. R. Co., 32 Fed. Rep., 722,* was sustained as being within the police power—not as an amendment of the corporation laws.

The learned Court below disposes of the decision in *Gulf, Colo. & S. F. Ry. Co. vs. Ellis,* above referred to and quoted, by saying that the statute in question in that case "was not an amendment, or in the nature of an amendment, of the charter of railroad corporations, and, if it was, it does not appear to have been made by virtue of any power reserved to the Legislature" (Tr., p. 17). We submit that there was nothing in the statute referred to which prevented its being considered an amendment of the railroad laws of

Texas, but the point seems to have been overlooked by the eminent counsel in the case and was not raised *sua sponte* by this Court.

The judgment of the Supreme Court of Arkansas should be reversed.

Respectfully submitted,

JOHN F. DILLON,
WINSLOW S. PIERCE,
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Of Counsel.

Office Supreme Court U. S.
FILED
DEC 10 1898
JAMES H. McKENNEY,
Clerk

No. 120.

Brf. of Garland & Garland for D.

Filed Dec. 10, 1898.

In the Supreme Court of the United States.

October Term, 1898.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff in Error,

vs.

CHARLES PAUL.

No. 120.

IN ERROR TO THE SUPREME COURT OF ARKANSAS.

BRIEF FOR DEFENDANT IN ERROR.

A. H. GARLAND,
R. C. GARLAND,
For Defendant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, *Plaintiff in Error,*

vs.

CHARLES PAUL.

No. 120.

In Error to the Supreme Court of Arkansas.

Brief for Defendant in Error.

Paul sued the plaintiff in error in the Circuit Court of Saline County, Arkansas, for $21.80, due him as a laborer for plaintiff, and a penalty thereon of $1.25 per day for failure to pay him what was due when he was discharged. (Rec., 3.)

The plaintiff in error appeared and demurred to the complaint, and most violently assaulted the act of the Arkansas legislature, under which this claim was asserted, for unconstitutionality, being repugnant to articles V and XIV of the amendments to the Constitution of the United States, and quite obnoxious to numberless sections of the Constitution of Arkansas, and generally flagrant, oppressive, and intolerable. (Rec., 3, 4.)

The Circuit Court overruled the demurrer and the company answered; and all that is material here to be noticed is, such answer flung at the court again its terrible arraignment of the act of the legislature, and a demurrer by Paul to that part of the answer was sustained. (Rec., 6.)

The case then went to trial before the court, the parties waiving a jury, and the court found for Paul in the sum of $70.55 (Rec., 6, 7), and on appeal by the company to the Supreme Court of Arkansas the judgment was affirmed (Rec., 6, 7, 29), and the company brings the case here by writ of error for review.

The section of the act of March 25, 1889, entitled "An act to provide for the protection of servants and employees of railroads," against which plaintiff in error was so bitter, is as follows:

> "Whenever any corporation, engaged in the business of operating or constructing any railroad or railroad bridge, shall discharge with or without cause, or refuse to further employ, any servant or employee thereof, the unpaid wages of each servant or employee then earned at the contract rate, without abatement or deduction, shall be and become due and payable on the day of such discharge or refusal to longer employ, and if the same be not paid on such day, then, as a penalty for such nonpayment, the wages of such servant or employee shall continue at the same rate until paid: *Provided*, such wages shall not continue more than sixty days, unless an action therefor shall be commenced within that time."

All questions in the case are eliminated therefrom in this court, except the one as to what, if any, affront this

section gives to the Vth and XIVth amendments of the Constitution of the United States. The others sought to be raised are matters for the Supreme Court of Arkansas, and its judgment upon them is not reviewable here.

Upon the point or points presented, it is respectfully submitted, no argument can be needed; but if the court should think otherwise, we refer it to the opinion of Judge Battle, of the Supreme Court of the State, which is the opinion of that court, as clear, cogent, and conclusive. (Rec., 10–18.) And upon that we submit the case without brief.

But there is one thing we wish to call the attention of the court to, and insist upon:

If this is not a *delay* case, in every respect, gazing at it from any direction, then we are without hope of seeing one. This act has stood the test so long, and others in different States similar to it as well, there can be no motive for the writ of error here but delay, and we ask damages under the statute and the rule of this court, and move the court to impose them.

Rule 23;
Rev. Stats., section 1010;
T. & P. Ry. Co. *v.* Volk, 151 U. S., 73.

Respectfully.

A. H. GARLAND,
R. C. GARLAND,
For Defendant.

ST. LOUIS, IRON MOUNTAIN AND ST. PAUL RAILWAY COMPANY *v.* PAUL.

ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

No. 120. Submitted January 10, 1899. — Decided March 6, 1899.

The act of the legislature of Arkansas of March 25, 1889, entitled an act to provide for the protection of servants and employés of railroads, is not in conflict with the provisions of the Constitution of the United States.

THIS action was commenced in a justice's court in Saline Township, Saline County, Arkansas, by Charles Paul against the St. Louis, Iron Mountain and Southern Railway Company, a corporation organized under the laws of the State of Arkansas, and owning and operating a railroad within that State, to recover $21.80 due him as a laborer, and a penalty of $1.25 per day for failure to pay him what was due him when he was discharged. The case was carried by appeal to the Circuit Court of Saline County and there tried *de novo*. Defendant demurred to so much of the complaint as sought to recover the penalty on the ground that the act of the general assembly of Arkansas entitled "An act to provide for the protection of servants and employés of railroads," approved March 25, 1889, Acts Ark. 1889, 76, which provided therefor, was in violation of articles five and fourteen of the Amendments to the Constitution of the United States, and also in violation of the constitution of the State of Arkansas. The demurrer was overruled, and defendant answered, setting up certain matters not material here, and reiterating in its third paragraph the

objection that the act was unconstitutional and void. To this paragraph plaintiff demurred, and the demurrer was sustained. The case was then heard by the court, the parties having waived a trial by jury, and the court found that the plaintiff was entitled to recover the sum claimed and the penalty at the rate of daily wages from the date of the discharge until the date of the commencement of the suit, and entered judgment accordingly. Defendant appealed to the Supreme Court of the State of Arkansas, which affirmed the judgment, 64 Arkansas, 83, and this writ of error was then brought.

The act in question is as follows:

"SECTION 1. Whenever any railroad company or any company, corporation or person engaged in the business of operating or constructing any railroad or railroad bridge, or any contractor or subcontractor engaged in the construction of any such road or bridge, shall discharge, with or without cause, or refuse to further employ any servant or employé thereof, the unpaid wages of any such servant or employé, then earned at the contract rate, without abatement or deduction, shall be, and become due and payable on the day of such discharge, or refusal to longer employ; and if the same be not paid on such day then, as a penalty for such non-payment, the wages of such servant or employé shall continue at the same rate until paid. *Provided*, Such wages shall not continue more than sixty days, unless an action therefor shall be commenced within that time.

"SEC. 2. That no such servant or employé who secretes or absents himself to avoid payment to him, or refuses to receive the same when fully tendered, shall be entitled to any benefit under this act for such time as he so avoids payment.

"SEC. 3. That any such servant or employé whose employment is for a definite period of time, and who is discharged without cause before the expiration of such time may, in addition to the penalties prescribed by this act, have an action against any such employer for any damages he may have sustained by reason of such wrongful discharge, and such action may be joined with an action for unpaid wages and penalty.

"SEC. 4. That this act shall take effect and be in force from and after its passage."

Mr. John F. Dillon, *Mr. Winslow S. Pierce* and *Mr. David D. Duncan* for plaintiff in error.

Mr. A. H. Garland and *Mr. R. C. Garland* for defendant in error.

MR. CHIEF JUSTICE FULLER, after stating the case, delivered the opinion of the court.

Plaintiff in error was a corporation duly organized under the laws of Arkansas and engaged in operating a railroad in that State.

The state constitution provided: "Corporations may be formed under general laws; which laws may, from time to time, be altered or repealed. The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators." Art. XII, § 6. This constitution was adopted in 1874, but, prior to that, the constitution of 1868 had declared: "The general assembly shall pass no special act conferring corporate powers. Corporations may be formed under general laws; and all such laws may, from time to time, be altered or repealed." Art. V, § 48.

In *Leep* v. *Railway Co.*, 58 Arkansas, 407, section one of the act of March 25, 1889, was considered by the Supreme Court of Arkansas, and was held unconstitutional so far as affecting natural persons, but sustained in respect of corporations as a valid exercise of the right reserved by the constitution "to alter, revoke or annul any charter of incorporation."

The court conceded that the legislature could not under the power to amend take from corporations the right to contract,

but adjudged that it could regulate that right by amendment when demanded by the public interest, though not to such an extent as to render it ineffectual, or substantially impair the object of incorporation.

As the constitution expressly provided that the power to amend might be exercised whenever in the opinion of the legislature the charter might "be injurious to the citizens," and as railroad corporations were organized for a public purpose; their roads were public highways; and they were common carriers; it was held that whenever their charters became obstacles to such legislative regulations as would make their roads subserve the public interest to the fullest extent practicable, they would be in that respect injurious, and might be amended; and as it was the duty of the companies to serve the public as common carriers in the most efficient manner practicable, the legislature might so change their charters as to secure that result. And the court said: "If the legislature, in its wisdom, seeing that their employés are and will be persons dependent on their labor for a livelihood, and unable to work on a credit, should find that better servants and service could be secured by the prompt payment of their wages on the termination of their employment, and that the purpose of their creation would thereby be more nearly accomplished, it might require them to pay for the labor of their employés when the same is fully performed, at the end of their employment. If it be true that in doing so it would interfere with contracts which are purely and exclusively private, and thereby limit their right to contract with individuals, it would nevertheless, under such circumstances, have the right to do so under the reserved power to amend." But the court added that it did not follow that the legislature could by amendment fix or limit the compensation of employés, and particularly not as the right to amend was to be exercised so "that no injustice shall be done to the corporators;" that, however, this act was not obnoxious to that objection, as it left "to the corporations the right of making contracts with their employés on advantageous terms."

In respect of the provision that the unpaid wages then

earned at the contract rate were to become due and payable on the cessation of the employment, "without abatement or deduction," the court held that that did not "require the corporation to pay the employé all the wages to which he would have been entitled had he fully performed his contract up to the time of his discharge, notwithstanding he had failed to do so, and had damaged the corporation thereby;" but that it meant "that the unpaid wages earned at the contract rate at the time of the discharge shall be paid without discount on account of the payment thereof before the time they were payable according to the terms of the contract of employment."

Construing the statute thus, and, by elimination, confining it to the corporations described, its validity was sustained as within the reserved power of amendment; and the case was approved and followed in that before us.

The scope of the power to amend, and the general subject of the lawfulness of limitations on the right to contract were considered at length, with full citation of authority, in both these decisions.

The contention is that as to railroad corporations organized prior to its passage, the act was void because in violation of the Fourteenth Amendment. Corporations are the creations of the State, endowed with such faculties as the State bestows and subject to such conditions as the State imposes, and if the power to modify their charters is reserved, that reservation is a part of the contract, and no change within the legitimate exercise of the power can be said to impair its obligation; and as this amendment rested on reasons deduced from the peculiar character of the business of the corporations affected and the public nature of their functions, and applied to all alike, the equal protection of the law was not denied. *Missouri Pacific Railway* v. *Mackey*, 127 U. S. 205.

The question then is whether the amendment should have been held unauthorized because amounting to a deprivation of property forbidden by the Federal Constitution.

The power to amend "cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to

possession of contracts lawfully made," Waite, C. J., *Sinking Fund cases*, 99 U. S. 700; but any alteration or amendment may be made "that will not defeat or substantially impair the object of the grant, or any rights which have vested under it, and that the legislature may deem necessary to secure either that object or other public or private rights," Gray, J., *Commissioners* v. *Holyoke Water Power Company*, 104 Mass. 446, 451; *Greenwood* v. *Freight Co.*, 105 U. S. 13; *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347.

This act was purely prospective in its operation. It did not interfere with vested rights, or existing contracts, or destroy, or sensibly encroach upon, the right to contract, although it did impose a duty in reference to the payment of wages actually earned, which restricted future contracts in the particular named.

In view of the fact that these corporations were clothed with a public trust, and discharged duties of public consequence, affecting the community at large, the Supreme Court held the regulation, as promoting the public interest in the protection of employés to the limited extent stated, to be properly within the power to amend reserved under the state constitution.

Inasmuch as the right to contract is not absolute, but may be subjected to the restraints demanded by the safety and welfare of the State, we do not think that conclusion in its application to the power to amend can be disputed on the ground of infraction of the Fourteenth Amendment. *Orient Insurance Company* v. *Daggs*, 172 U. S. 557; *Holden* v. *Hardy*, 169 U. S. 366; *St. Louis & San Francisco Railway* v. *Matthews*, 165 U. S. 1.

Gulf, Colorado and Santa Fé Railway v. *Ellis*, 165 U. S. 150, 159, is not to the contrary, and was properly distinguished from this case by the Supreme Court of Arkansas. There a state statute provided for the assessment of an attorney's fee of not exceeding ten dollars against railroad companies for failure to pay certain debts, and the exaction was held to be a penalty, although no specific duty was imposed for the nonperformance of which it was inflicted. This court said: "The

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statute arbitrarily singles out one class of debtors and punishes it for a failure to perform certain duties — duties which are equally obligatory upon all debtors; a punishment not visited by reason of the failure to comply with any proper police regulations, or for the protection of the laboring classes, or to prevent litigation about trifling matters, or in consequence of any special corporate privileges bestowed by the State." The conclusion was that the subjection of railroad companies only, to the penalty, was purely arbitrary, not justifiable on any reasonable theory of classification, and that the statute denied the equal protection of the law demanded by the Fourteenth Amendment. In this case the act was passed "for the protection of servants and employés of railroads," and was upheld as an amendment of railroad charters, such exercise of the power reserved being justified on public considerations, and a duty was specially imposed for the failure to discharge which the penalty was inflicted. The penalty was sustained because the requirement was valid.

Judgment affirmed.